

House Bill 60

By: Representative Powell of the 29th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 42 of the Official Code of Georgia Annotated, relating to penal institutions,
2 so as to create the Department of Probation/Parole Community Based Supervision; to provide
3 for the responsibilities of the department with respect to supervision of probationers and
4 parolees; to transfer responsibility of certain functions of probation and parole supervision
5 to the department; to provide for the selection, service, and powers and duties of the director
6 and employees of the department; to provide for rules and regulations and forms; to provide
7 for administration; to authorize appropriation of funds; to provide for transfer of prior
8 appropriations; to provide for transfer of personnel, equipment, and facilities; to amend
9 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, to correct
10 cross-references; to amend Title 17 of the Official Code of Georgia Annotated, relating to
11 criminal procedure, so as to change provisions relating to imposition and service of split
12 sentences; to provide for sentencing orders and their terms and effect; to provide that where
13 a person is sentenced to a term of imprisonment followed by a period of probation and the
14 person is paroled or released prior to service of the full period of imprisonment, the person
15 shall be subject to an increased period of probation and probation supervision but shall not
16 be subject to supervision by the State Board of Pardons and Paroles; to make corresponding
17 changes with respect to the jurisdiction and authority of the State Board of Pardons and
18 Paroles; to amend Titles 19, 40, and 45 of the Official Code of Georgia Annotated, relating
19 to domestic relations, motor vehicles and traffic, and public officers and employees,
20 respectively, so as to provide for certain changes in the administrative organization of the
21 Department of Corrections and the State Board of Pardons and Paroles and to provide for
22 conforming amendments; to provide for related matters; to provide for an effective date and
23 applicability; to repeal conflicting laws; and for other purposes.

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended by adding at its end a new Chapter 14 to read as follows:

"CHAPTER 14

42-14-1.

As used in this chapter, the term:

(1) 'Board' means the State Board of Pardons and Paroles.

(2) 'Corrections' means the Department of Corrections.

(3) 'Department' means the Department of Probation/Parole Community Based Supervision.

(4) 'Officer' means a person who acts as a supervisor for a probationer or parolee.

(5) 'Split sentence' means any felony sentence that includes a term of imprisonment followed by a term of probation.

42-14-2.

There is created the Department of Probation/Parole Community Based Supervision. The department shall be the agency primarily responsible for:

(1) Supervision of all defendants who receive a felony sentence of straight probation;

(2) Supervision of all defendants who receive a felony sentence that includes confinement in a probation detention or probation diversion center;

(3) Supervision of all defendants who receive a felony split sentence;

(4) Supervision of all defendants placed on parole or other conditional release from imprisonment by the board;

(5) Supervision of juvenile offenders pursuant to Code Section 42-8-30;

(6) Administration of the laws and regulations relating to probation and parole supervision, as provided for in Chapters 8 and 9 of this title; and

(7) Enforcement of laws and regulations relating to probation and parole supervision, as provided for in Chapters 8 and 9 of this title.

42-14-3.

(a) There shall be a director of the department who shall be both appointed by and serve at the pleasure of the Governor. Subject to the policies, rules, and regulations established by the board and corrections, the director shall supervise, direct, account for, organize, plan, administer, and execute the functions of the department. The department shall be

1 attached to corrections for administrative purposes only, as provided in Code Section
2 50-4-3.

3 (b) The director shall receive an annual salary to be set by the Governor which shall be his
4 or her total compensation for services as director. The director shall be reimbursed for all
5 actual and necessary expenses incurred by him or her in carrying out his or her official
6 duties.

7 (c) The duties of the department shall be performed by that department and not by any
8 other agency of state government, and the department shall not perform the duties of any
9 other agency of state government. The position of director of the department shall be a
10 separate and distinct position from any other position in state government. The duties of
11 the director shall be performed by the director and not by any other officer of state
12 government, and the director shall not perform the duties of any other officer of state
13 government.

14 42-14-4.

15 (a) The director shall establish units within the department as he or she deems proper for
16 its administration and shall designate persons to be assistant directors of each unit and to
17 exercise authority as he or she may delegate to them in writing.

18 (b) The director shall have the authority to employ as many persons as he or she deems
19 necessary for the administration of the department and for the discharge of the duties of his
20 or her office. The director shall issue all necessary directions, instructions, orders, and
21 rules applicable to employees of the department. The director shall have authority, as the
22 director deems proper, to employ, assign, compensate, and discharge employees of the
23 department within the limitations of the department's appropriation and the restrictions set
24 forth by law.

25 (c) All employees of the department shall be compensated upon a fixed salary basis, and
26 no person shall be compensated for services to the department on a commission or
27 contingent fee basis.

28 (d) Neither the director nor any officer or employee of the department shall be given or
29 receive any fee, compensation, loan, gift, or other thing of value in addition to the
30 compensation and expense allowance provided by law for any service or pretended service
31 either rendered or to be rendered as director or as an officer or employee of the department.

32 42-14-5.

33 (a) The director shall have the power to make and publish reasonable rules and regulations
34 not inconsistent with this title or other laws or with the Constitution of this state or of the

United States for the administration of this chapter or any law which it is his or her duty to administer.

(b) The director may prescribe forms as he or she deems necessary for the administration and enforcement of this chapter and Chapters 8 and 9 of this title or any law which it is his or her duty to administer.

(c) The following rules and regulations shall remain of full force and effect as rules and regulations of the department until amended, repealed, or superseded by rules or regulations adopted by the director of the department:

(1) All rules and regulations previously adopted by the Advisory Council for Probation which relate to functions transferred under this chapter from the state-wide probation system to the department;

(2) All rules and regulations previously adopted by corrections which relate to functions transferred under this chapter from corrections to the department; and

(3) All rules and regulations previously adopted by the board which relate to functions transferred under this chapter from the board to the department.

42-14-6.

(a) Appropriations to corrections and the board for functions transferred to the department pursuant to this chapter may be transferred to the department as provided for in Code Section 45-12-90. Personnel, equipment, and facilities previously employed by corrections and the board for transferred functions shall likewise be transferred to the department. Any disagreement as to any of the transfers shall be resolved by the Governor.

(b) The enactment of this chapter and the Act by which it is enacted shall not affect or abate the status of a probation revocation or parole revocation which occurred prior to July 1, 2005."

SECTION 2.

Said title is further amended by striking Code Section 42-1-10, relating to preliminary urine screen drug tests, and inserting in lieu thereof the following:

"42-1-10.

(a) Any probation/parole supervisor, probation officer, ~~parole officer~~, or other official or employee of the Department of Corrections or the Department of Probation/Parole Community Based Supervision who supervises any person covered under the provisions of paragraphs (1) through (7) of this subsection shall be exempt from the provisions of Chapter 22 of Title 31 for the limited purposes of administering a preliminary urine screen drug test to any person who is:

(1) Incarcerated;

(2) Released as a condition of probation for a felony or misdemeanor;

(3) Released as a condition of conditional release;

(4) Released as a condition of parole;

(5) Released as a condition of provisional release;

(6) Released as a condition of pretrial release; or

(7) Released as a condition of control release.

(b) The Department of Corrections, the Department of Probation/Parole Community Based Supervision, and the State Board of Pardons and Paroles shall develop a procedure for the performance of preliminary urine screen drug tests in accordance with the manufacturer's standards for certification. Probation officers, probation/parole officers supervisors, or other officials or employees of the Department of Corrections or the Department of Probation/Parole Community Based Supervision who are supervisors of any person covered under paragraphs (1) through (7) of subsection (a) of this Code section shall be authorized to perform preliminary urine screen drug tests in accordance with such procedure. Such procedure shall include instructions as to a confirmatory test by a licensed clinical laboratory where necessary."

SECTION 3.

Said title is further amended by striking Code Section 42-8-2, relating to the Advisory Council for Probation's duties and responsibilities, and inserting in lieu thereof the following:

"42-8-2.

(a) As used in this Code section, the term:

(1) 'Board' means the Board of Corrections.

(2) 'Corrections' means the Department of Corrections.

(3) 'Department' means the Department of Probation/Parole Community Based Supervision.

(b) The Advisory Council for Probation shall meet, consult, and advise with the Board of Corrections board, the department, and the Department of Corrections corrections on questions and matters of mutual concern and interest relative to policy, personnel, and budget which pertain to probationary activities, powers, duties, and responsibilities of the board, and the department, and corrections. The advisory council shall institute such studies and surveys and shall make such recommendations to the board, corrections, and the department as the council deems wise and necessary and which, in the opinion of the council, will improve the effectiveness and efficiency of probation services rendered throughout the state. No change in existing policy of the board, corrections, or the

1 department relative to probation, if the magnitude of the change will result in a significant
2 impact upon state-wide probationary services, or any such new policy, shall be instituted
3 by the board, corrections, or the department without opportunity being afforded to the
4 advisory council to advise and consult with the board, corrections, or the department on the
5 proposed changes. However, the recommendations of the advisory council shall be
6 advisory only and shall not bind the board, corrections, or the department. The board,
7 corrections, the department, and the council shall meet periodically throughout each year
8 for the purpose of improving the administration, efficiency, and effectiveness of probation
9 services."

10 SECTION 4.

11 Said title is further amended by striking Code Section 42-8-21, relating to definitions in the
12 "State-wide Probation Act," and inserting in lieu thereof the following:

13 "42-8-21.

14 As used in this article, the term:

15 (1) 'Board' means the Board of Corrections.

16 (2) 'Commissioner' means the commissioner of corrections.

17 (3) 'Department' means the Department of ~~Corrections~~ Probation/Parole Community
18 Based Supervision.

19 (4) 'Split sentence' means any felony sentence that includes a term of imprisonment
20 followed by a term of probation."

21 SECTION 5.

22 Said title is further amended by striking Code Section 42-8-22, relating to creation and
23 administration of the state-wide probation system, and inserting in lieu thereof the following:

24 "42-8-22.

25 There is created a state-wide probation system for felony offenders to be administered by
26 the Department of ~~Corrections~~ Probation/Parole Community Based Supervision. The
27 probation system shall not be administered as part of the duties and activities of the State
28 Board of Pardons and Paroles; but with respect to a split sentence imposed on or after July
29 1, 2005, the department shall have jurisdiction over any increased period of probation
30 resulting from a release of the defendant by the State Board of Pardons and Paroles as
31 provided for in Code Section 17-10-1.3. Separate files and records shall be kept with
32 relation to the system."

33 SECTION 6.

Said title is further amended by striking Code Section 42-8-24, relating to the general duties of the department and rules and regulations, and inserting in lieu thereof the following:

"42-8-24.

It shall be the duty of the department to supervise and direct the work of the probation/parole supervisors provided for in Code Section 42-8-25 and to keep accurate files and records on all probation cases, split sentence probation cases, parole cases, persons released pursuant to Code Section 17-10-1, and persons ~~on probation under supervision~~. It shall be the duty of the board to promulgate rules and regulations necessary to effectuate the purposes of this chapter."

SECTION 7.

Said title is further amended by striking Code Section 42-8-25, relating to the employment of probation supervisors and assignment to circuits, and inserting in lieu thereof the following:

"42-8-25.

The department shall employ probation/parole supervisors. The department may assign one supervisor to each judicial circuit in this state or, for purposes of assignment, may consolidate two or more judicial circuits and assign one supervisor thereto. In the event the department determines that more than one supervisor is needed for a particular circuit, an additional supervisor or additional supervisors may be assigned to the circuit. The department is authorized to direct any probation/parole supervisor to assist any other probation/parole supervisor wherever assigned. In the event that more than one supervisor is assigned to the same office or to the same division within a particular judicial circuit, the department shall designate one of the supervisors to be in charge."

SECTION 8.

Said title is further amended by striking Code Section 42-8-26, relating to the qualifications of probation supervisors, compensation, expenses, conflicts of interest, and bond, and inserting in lieu thereof the following:

"42-8-26.

(a) In order for a person to hold the office of probation/parole supervisor, he or she must be at least 21 years of age at the time of appointment and must have completed a standard two-year college course, provided that any person who is employed as a probation supervisor on or before July 1, 1972, shall not be required to meet the educational requirements specified in this Code section, nor shall he or she be prejudiced in any way for not possessing the requirements. The qualifications provided in this Code section are the minimum qualifications and the department is authorized to prescribe such additional

1 and higher educational qualifications from time to time as it deems desirable, but not to
2 exceed a four-year standard college course.

3 (b) The compensation of the probation/parole supervisors shall be set by the State
4 Personnel Board and the State Merit System of Personnel Administration. Probation/parole
5 supervisors shall also be allowed travel and other expenses as are other state employees.

6 (c)(1) No supervisor shall engage in any other employment, business, or activities which
7 interfere or conflict with his or her duties and responsibilities as probation/parole
8 supervisor.

9 (2) No supervisor shall own, operate, have any financial interest in, be an instructor at,
10 or be employed by any private entity which provides drug or alcohol education services
11 or offers a DUI Alcohol or Drug Use Risk Reduction Program certified by the
12 Department of Human Resources.

13 (3) No supervisor shall specify, directly or indirectly, a particular DUI Alcohol or Drug
14 Use Risk Reduction Program which a probationer may or shall attend. This paragraph
15 shall not prohibit any supervisor from furnishing any probationer, upon request, the
16 names of certified DUI Alcohol or Drug Use Risk Reduction Programs. Any supervisor
17 violating this paragraph shall be guilty of a misdemeanor.

18 (d) Each probation/parole supervisor shall give bond in such amount as may be fixed by
19 the department payable to the department for the use of the person or persons damaged by
20 his or her misfeasance or malfeasance and conditioned on the faithful performance of his
21 or her duties. The cost of the bond shall be paid by the department; provided, however, that
22 the bond may be procured, either by the department or by the Department of Administrative
23 Services, under a master policy or on a group blanket coverage basis, where only the
24 number of positions in each judicial circuit and the amount of coverage for each position
25 are listed in a schedule attached to the bond; and in such case each individual shall be fully
26 bonded and bound as principal, together with the surety, by virtue of his or her holding the
27 position or performing the duties of probation/parole supervisor in the circuit or circuits,
28 and his or her individual signature shall not be necessary for such bond to be valid in
29 accordance with all the laws of this state. The bond or bonds shall be made payable to the
30 department."

31 SECTION 9.

32 Said title is further amended by striking Code Section 42-8-27, relating to the duties
33 probation supervisors, and inserting in lieu thereof the following:

34 "42-8-27.

35 The probation/parole supervisor shall supervise and counsel probationers in the judicial
36 circuit to which he or she is assigned. Each supervisor shall perform the duties prescribed

1 in this chapter and ~~such~~ other duties as are prescribed by the department and shall keep
2 ~~such~~ records and files and make ~~such~~ any reports as are required of him or her."

3 SECTION 10.

4 Said title is further amended by striking Code Section 42-8-28, relating to the assignment of
5 probation supervisors among the judicial circuits, and inserting in lieu thereof the following:

6 "42-8-28.

7 Probation/parole supervisors shall be assigned among the respective judicial circuits based
8 generally on the relative number of persons on probation and parole in each circuit."

9 SECTION 11.

10 Said title is further amended by striking Code Section 42-8-29, relating to presentence
11 investigations, supervision of probationers, and record keeping, and inserting in lieu thereof
12 the following:

13 "42-8-29.

14 (a) It shall be the duty of the probation/parole supervisor to investigate all cases referred
15 to him or her by the court and to make his findings and report thereon in writing to the
16 court with his a recommendation. The superior court may require, before imposition of
17 sentence, a presentence investigation and written report in each felony case in which the
18 defendant has entered a plea of guilty or nolo contendere or has been convicted.

19 (b) The probation/parole supervisor shall cause to be delivered to each person placed on
20 probation under his or her supervision a certified copy of the terms of probation and any
21 change or modification thereof and shall cause the person to be instructed regarding the
22 same. ~~He~~ The probation/parole supervisor shall keep informed concerning the conduct,
23 habits, associates, employment, recreation, and whereabouts of the probationer by visits,
24 by requiring reports, or in other ways. ~~He~~ The probation/parole supervisor shall make ~~such~~
25 reports in writing or otherwise as the court may require. ~~He~~ The probation/parole
26 supervisor shall use all practicable and proper methods to aid and encourage persons on
27 probation and to bring about improvements in their conduct and condition.

28 (c) ~~He~~ The probation/parole supervisor shall keep records on each probationer and parolee
29 referred to ~~him~~ the probation/parole supervisor."

30 SECTION 12.

31 Said title is further amended by striking Code Section 42-8-29.1, relating to disposition of
32 a probation supervisor's documents upon committing a defendant to an institution, and
33 inserting in lieu thereof the following:

34 "42-8-29.1.

(a) When a convicted person is committed to an institution under the jurisdiction of ~~the~~ department corrections, any presentence or post-sentence investigation or psychological evaluation compiled by a probation/parole supervisor or other probation official shall be forwarded to any division or office designated by the commissioner. Accompanying this document or evaluation will be the case history form and the criminal history sheets from the Federal Bureau of Investigation or the Georgia Crime Information Center, if available, unless any ~~such~~ of this information has previously been sent to ~~the department~~ corrections pursuant to Code Section 42-5-50. A copy of these same documents shall be made available for the State Board of Pardons and Paroles. A copy of one or more of these documents, based on need, may be forwarded to another institution to which the defendant may be committed.

(b) The prison or institution receiving these documents shall maintain the confidentiality of the documents and the information contained therein and shall not send them or release them or reveal them to any other person, institution, or agency without the express consent of the ~~probation~~ unit which originated or accumulated the documents."

SECTION 13.

Said title is further amended by striking Code Section 42-8-30, relating to supervision of juvenile offenders by probation supervisors, and inserting in lieu thereof the following:

"42-8-30.

In the counties where no juvenile probation system exists, juvenile offenders, upon direction of the court, shall be supervised by probation/parole supervisors. Other than in this respect, nothing in this article shall be construed to change or modify any law relative to probation as administered by any juvenile court in this state."

SECTION 14.

Said title is further amended by striking Code Section 42-8-31, relating to collection and disbursement of funds by probation supervisors, record keeping, and bank accounts, and inserting in lieu thereof the following:

"42-8-31.

No probation/parole supervisor shall collect or disburse any funds whatsoever, except by written order of the court; and it shall be the duty of the supervisor to transmit a copy of the order to the department not later than 15 days after it has been issued by the court. Every supervisor who collects or disburses any funds whatsoever shall faithfully keep the records of accounts as are required by the department, which records shall be subject to inspection by the department at any time. In every instance where a bank account is required, it shall be kept in the name of the 'State Probation Office.'"

SECTION 15.

Said title is further amended by striking Code Section 42-8-32, relating to funds which may be collected by probation supervisors, and inserting in lieu thereof the following:

"42-8-32.

No probation/parole supervisor shall be directed to collect any funds other than funds directed to be paid as the result of a criminal proceeding."

SECTION 16.

Said title is further amended by striking Code Section 42-8-33, relating to auditing probation supervisors' accounts and restrictions on refunding overpayments of fines, restitution, or moneys owed, and inserting in lieu thereof the following:

"42-8-33.

(a) The department shall make periodic audits of each probation/parole supervisor who, by virtue of ~~his~~ the supervisor's duties, has any moneys, fines, court costs, property, or other funds coming into ~~his~~ the supervisor's control or possession or being disbursed by ~~him~~ the supervisor. The department shall keep a permanent record of the audit of each probation/parole supervisor's accounts on file. It shall be the duty of the employee of the department conducting the audit to notify the department in writing of any discrepancy of an illegal nature that might result in prosecution. The department shall have the right to interview and make inquiry of certain selected payors or recipients of funds, as it may choose, without notifying the probation/parole supervisor, to carry out the purposes of the audit. The employee who conducts the audit shall be required to give bond in such amount as may be set by the department, in the same manner and for the same purposes as provided under Code Section 42-8-26 for the bonds of probation/parole supervisors. The bond shall bind the employee and ~~his~~ the surety in the performance of ~~his~~ the employee's duties.

(b) Any overpayment of fines, restitutions, or other moneys owed as a condition of probation shall not be refunded to the probationer if the amount of ~~such~~ the overpayment is less than \$5.00."

SECTION 17.

Said title is further amended by striking subsections (b), (c), and (d) of Code Section 42-8-34, relating to probation hearings, and inserting in lieu thereof the following:

"(b) Prior to the hearing, the court may refer the case to the probation/parole supervisor of the circuit in which the court is located for investigation and recommendation. The court, upon such reference, shall direct the supervisor to make an investigation and to report to the court, in writing at a specified time, upon the circumstances of the offense and the criminal record, social history, and present condition of the defendant, together with the

1 supervisor's recommendation; and it shall be the duty of the supervisor to carry out the
2 directive of the court.

3 (c) Subject to the provisions of subsection (a) of Code Section 17-10-1 and subsection (f)
4 of Code Section 17-10-3, if it appears to the court upon a hearing of the matter that the
5 defendant is not likely to engage in a criminal course of conduct and that the ends of justice
6 and the welfare of society do not require that the defendant shall presently suffer the
7 penalty imposed by law, the court in its discretion shall impose sentence upon the
8 defendant but may stay and suspend the execution of the sentence or any portion thereof
9 or may place ~~him~~ the defendant on probation under the supervision and control of the
10 probation/parole supervisor for the duration of ~~such probation~~ the sentence. The period of
11 probation or suspension shall not exceed the maximum sentence of confinement which
12 could be imposed on the defendant.

13 (d)(1) In every case that a court of this state or any other state sentences a defendant to
14 probation or any pretrial release or diversion program under the supervision of ~~the~~
15 ~~department~~ corrections, in addition to any fine or order of restitution imposed by the
16 court, there shall be imposed a probation fee as a condition of probation, release, or
17 diversion in the amount equivalent to \$23.00 per each month under supervision, and in
18 addition, a one-time fee of \$50.00 where such defendant was convicted of any felony.
19 The probation fee may be waived or amended after administrative process by ~~the~~
20 ~~department~~ corrections and approval of the court, or upon determination by the court, as
21 to the undue hardship, inability to pay, or any other extenuating factors which prohibit
22 collection of the fee; provided, however, that the imposition of sanctions for failure to pay
23 fees shall be within the discretion of the court through judicial process or hearings.
24 Probation fees shall be waived on probationers incarcerated or detained in a ~~departmental~~
25 corrections or other confinement facility which prohibits employment for wages. All
26 probation fees collected by the department shall be paid into the general fund of the state
27 treasury, except as provided in subsection (f) of Code Section 17-15-13, relating to sums
28 to be paid into the Georgia Crime Victims Emergency Fund. Any fees collected by the
29 court under this paragraph shall be remitted not later than the last day of the month after
30 such fee is collected to the Georgia Superior Court Clerks' Cooperative Authority for
31 deposit into the general fund of the state treasury.

32 (2) In addition to any other provision of law, any person convicted of a violation of Code
33 Section 40-6-391 or subsection (b) of Code Section 16-13-2 who is sentenced to
34 probation or a suspended sentence by a municipal, magistrate, probate, recorder's,
35 mayor's, state, or superior court shall also be required by the court to pay a one-time fee
36 of \$25.00. The clerk of court, or if there is no clerk the person designated to collect fines,
37 fees, and forfeitures for such court, shall collect such fee and remit the same not later than

1 the last day of the month after such fee is collected to the Georgia Superior Court Clerks'
2 Cooperative Authority for deposit into the general fund of the state treasury."

3 SECTION 18.

4 Said title is further amended by striking subsection (a) of Code Section 42-8-34.2, relating
5 to a defendant's delinquent payment of fines, costs, restitution, or reparation and costs of
6 garnishment, and inserting in lieu thereof the following:

7 "(a) In the event that a defendant is delinquent in the payment of fines, costs, or restitution
8 or reparation, as was ordered by the court as a condition of probation, the defendant's
9 probation/parole supervisor ~~officer~~ is authorized, but not required, to execute a sworn
10 affidavit wherein the amount of arrearage is set out. In addition, the affidavit shall contain
11 a succinct statement as to what efforts the department has made in trying to collect the
12 delinquent amount. The affidavit shall then be submitted to the sentencing court for
13 approval. Upon signature and approval of the court, said arrearage shall then be collectable
14 through issuance of a writ of fieri facias by the clerk of the sentencing court; and the
15 department may enforce such collection through any judicial or other process or procedure
16 which may be used by the holder of a writ of execution arising from a civil action."

17 SECTION 19.

18 Said title is further amended by striking Code Section 42-8-35, relating to terms and
19 conditions of probation, and inserting in lieu thereof the following:

20 "42-8-35.

21 (a) The court shall determine the terms and conditions of probation and may provide that
22 the probationer shall:

23 (1) Avoid injurious and vicious habits;

24 (2) Avoid persons or places of disreputable or harmful character;

25 (3) Report to the probation/parole supervisor as directed;

26 (4) Permit the supervisor to visit the probationer at the probationer's home or elsewhere;

27 (5) Work faithfully at suitable employment insofar as may be possible;

28 (6) Remain within a specified location;

29 (7) Make reparation or restitution to any aggrieved person for the damage or loss caused
30 by the probationer's offense, in an amount to be determined by the court. Unless
31 otherwise provided by law, no reparation or restitution to any aggrieved person for the
32 damage or loss caused by the probationer's offense shall be made if the amount is in
33 dispute unless the same has been adjudicated;

34 (8) Make reparation or restitution as reimbursement to a municipality or county for the
35 payment for medical care furnished the person while incarcerated pursuant to the

provisions of Article 3 of Chapter 4 of this title. No reparation or restitution to a local governmental unit for the provision of medical care shall be made if the amount is in dispute unless the same has been adjudicated;

(9) Repay the costs incurred by any municipality or county for wrongful actions by an inmate covered under the provisions of paragraph (1) of subsection (a) of Code Section 42-4-71;

(10) Support the probationer's legal dependents to the best of the probationer's ability;

(11) Violate no local, state, or federal laws and be of general good behavior;

(12) If permitted to move or travel to another state, agree to waive extradition from any jurisdiction where the probationer may be found and not contest any effort by any jurisdiction to return the probationer to this state; and

(13) Submit to evaluations and testing relating to rehabilitation and participate in and successfully complete rehabilitative programming as directed by the department.

(b) In determining the terms and conditions of probation for a probationer who has been convicted of a criminal offense against a victim who is a minor as that phrase is defined in subparagraph (a)(4)(B) of Code Section 42-1-12, the court may provide that the probationer shall be:

(1) Prohibited from entering or remaining present at a victim's school, place of employment, place of residence, or other specified place at times when a victim is present or from entering or remaining present in areas where minors congregate, child care facilities, or schools as those terms are defined in subsection (a) of Code Section 42-1-13;

(2) Required to wear a device capable of tracking the location of the probationer by means including electronic surveillance or global positioning systems. Unless the probationer is indigent, the department shall assess and collect fees from the probationer for such monitoring at levels set by regulation by the department; and

(3) Prohibited from seeking election to a ~~Local Board of Education~~ local board of education."

SECTION 20.

Said title is further amended by striking Code Section 42-8-35.1, relating to special alternative incarceration, and inserting in lieu thereof the following:

"42-8-35.1.

(a) In addition to any other terms or conditions of probation provided for under this chapter, the trial judge may provide that probationers sentenced for felony offenses committed on or after July 1, 1993, to a period of time of not less than one year on probation as a condition of probation must satisfactorily complete a program of confinement in a 'special alternative incarceration—probation boot camp' unit of the

1 ~~department~~ corrections for a period of 120 days computed from the time of initial
2 confinement in the unit; provided, however, ~~the department~~ that corrections may release
3 the defendant upon service of 90 days in recognition of excellent behavior.

4 (b) Before a court can place this condition upon the sentence, an initial investigation ~~will~~
5 shall be completed by the ~~probation officer~~ probation/parole supervisor which will indicate
6 that the probationer is qualified for such treatment in that the individual does not appear
7 to be physically or mentally disabled in a way that would prevent him or her from
8 strenuous physical activity, that the individual has no obvious contagious diseases, that the
9 individual is not less than 17 years of age nor more than 30 years of age at the time of
10 sentencing, and that ~~the department~~ corrections has granted provisional approval of the
11 placement of the individual in the 'special alternative incarceration—probation boot camp'
12 unit.

13 (c) In every case where an individual is sentenced under the terms of this Code section, the
14 sentencing court shall, within its probation order, direct ~~the department~~ corrections to
15 arrange with the sheriff's office in the county of incarceration to have the individual
16 delivered to a designated unit of ~~the department~~ corrections within a specific date not more
17 than 15 days after the issuance of such probation order by the court.

18 (d) At any time during the individual's confinement in the unit, but at least five days prior
19 to his or her expected date of release, ~~the department~~ corrections will certify to the trial
20 court as to whether the individual has satisfactorily completed this condition of probation.

21 (e) Upon the receipt of a satisfactory report of performance in the program from, ~~the~~
22 ~~department~~ corrections, the trial court shall release the individual from confinement in the
23 'special alternative incarceration—probation boot camp' unit. However, the receipt of an
24 unsatisfactory report will be grounds for revocation of the probated sentence as would any
25 other violation of a condition or term of probation.

26 (f) The satisfactory report of performance in the program from ~~the department~~ corrections
27 shall, in addition to the other requirements specified in this Code section, require
28 participation of the individual confined in the unit in such adult education courses
29 necessary to attain the equivalency of a grade five competency level as established by the
30 State Board of Education for elementary schools. Those individuals who are mentally
31 disabled as determined by initial testing are exempt from mandatory participation. After
32 the individual is released from the unit, it shall be a special condition of probation that the
33 individual participate in an education program in the community until grade five level
34 competency is achieved or active probation supervision terminates. It shall be the duty of
35 ~~the department~~ corrections to certify to the trial court that such individual has satisfactorily
36 completed this condition of probation while on active probation supervision. The receipt
37 of an unsatisfactory report may be grounds for revocation of the probated sentence as

1 would any other violation of a condition or term of probation. Under certain
2 circumstances, the probationer may be exempt from this requirement if it is determined by
3 the probation/parole supervisor ~~officer~~ that community education resources are inaccessible
4 to the probationer."

5 **SECTION 21.**

6 Said title is further amended by striking subsection (c) of Code Section 42-8-35.4, relating
7 to confinement in probation detention centers, and inserting in lieu thereof the following:

8 "(c) During the period of confinement, ~~the department~~ corrections may transfer the
9 probationer to other facilities in order to provide needed physical and mental health care
10 or for other reasons essential to the care and supervision of the probationer or as necessary
11 for the effective administration and management of its facilities."

12 **SECTION 22.**

13 Said title is further amended by striking subsection (c) of Code Section 42-8-35.5, relating
14 to confinement in probation diversion centers, and inserting in lieu thereof the following:

15 "(c) ~~The department~~ Corrections may assess and collect room and board fees from
16 diversion center program participants at a level set by ~~the department~~ corrections."

17 **SECTION 23.**

18 Said title is further amended by striking subsection (a) of Code Section 42-8-36, relating to
19 a probationer's duties, and inserting in lieu thereof the following:

20 "(a)(1) Any other provision of this article to the contrary notwithstanding, it shall be the
21 duty of a probationer, as a condition of probation, to keep his or her probation/parole
22 supervisor informed as to his or her residence. Upon the recommendation of the
23 probation/parole supervisor, the court may also require, as a condition of probation and
24 under ~~such~~ any terms as the court deems advisable, that the probationer keep the
25 probation/parole supervisor informed as to ~~his~~ the probationer's whereabouts. The failure
26 of a probationer to report to his or her probation/parole supervisor as directed or a return
27 of non est inventus or other return to a warrant, for the violation of the terms and
28 conditions of probation, that the probationer cannot be found in the county that appears
29 from the records of the probation/parole supervisor to be the probationer's county of
30 residence shall automatically suspend the running of the probated sentence until the
31 probationer shall personally report to the probation/parole supervisor, is taken into
32 custody in this state, or is otherwise available to the court; and such period of time shall
33 not be included in computing creditable time served on probation or as any part of the
34 time that the probationer was sentenced to serve. The effective date of the tolling of the

1 sentence shall be the date that the ~~officer~~ probation/parole supervisor returns the warrant
2 showing non est inventus. Any officer authorized by law to issue or serve warrants may
3 return the warrant for the absconded probationer showing non est inventus.

4 (2) In addition to the provisions of paragraph (1) of this subsection, if the
5 probation/parole supervisor submits an affidavit to the court stating that a probationer has
6 absconded and cannot be found, the running of the probated sentence shall be suspended
7 effective on the date such affidavit is submitted to the court and continuing until the
8 probationer shall personally report to the probation/parole supervisor, is taken into
9 custody in this state, or is otherwise available to the court."

10 SECTION 24.

11 Said title is further amended by striking subsection (b) of Code Section 42-8-37, relating to
12 terminating and reviewing probation cases, and inserting in lieu thereof the following:

13 "(b) Upon the request of the chief judge of the court from which ~~said~~ a person was
14 sentenced, the case of each person receiving a probated sentence of more than two years
15 shall be reviewed by the probation/parole supervisor responsible for that case after service
16 of two years on probation, and a written report of the probationer's progress shall be
17 submitted to the sentencing court along with the supervisor's recommendation as to early
18 termination. Upon the request of the chief judge of the court from which said person was
19 sentenced, each such case shall be reviewed and a written report submitted annually
20 thereafter, or more often if required, until the termination, expiration, or other disposition
21 of the case."

22 SECTION 25.

23 Said title is further amended by striking subsections (a) and (d) of Code Section 42-8-38,
24 relating to the procedures in probation revocation matters, and inserting in lieu thereof the
25 following:

26 "(a) Whenever, within the period of probation, a probation/parole supervisor believes that
27 a probationer under his or her supervision has violated ~~his~~ the terms of probation in a
28 material respect, ~~he~~ the probation/parole supervisor may arrest the probationer without
29 warrant, wherever found, and return ~~him~~ the probationer to the court granting the probation
30 or, if under supervision in a county or judicial circuit other than that of conviction, to a
31 court of equivalent original criminal jurisdiction within the county wherein the probationer
32 resides for purposes of supervision. Any officer authorized by law to issue warrants may
33 issue a warrant for the arrest of the probationer upon the affidavit of one having knowledge
34 of the alleged violation, returnable forthwith before the court in which revocation
35 proceedings are being brought."

1 "(d) In cases where the probation is revoked in a county other than the county of original
2 conviction, the clerk of court in the county revoking probation may record the order of
3 revocation in the judge's minute docket, which recordation shall constitute sufficient
4 permanent record of the proceedings in that court. The clerk shall send one copy of the
5 order revoking probation to ~~the department~~ corrections to serve as a temporary commitment
6 and shall send the original order revoking probation and all other papers pertaining thereto
7 to the county of original conviction to be filed with the original records. The clerk of court
8 of the county of original conviction shall then issue a formal commitment to ~~the department~~
9 corrections."

10 SECTION 26.

11 Said title is further amended by striking Code Section 42-8-42, relating to the provision of
12 office space and clerical help by the Department of Corrections and counties, and inserting
13 in lieu thereof the following:

14 "42-8-42.

15 ~~The department~~ Corrections may provide office space and clerical help wherever needed.

16 The counties of this state shall cooperate in this respect and, wherever possible, shall
17 furnish office space if needed."

18 SECTION 27.

19 Said title is further amended by striking subsections (b) and (c) of Code Section 42-8-72,
20 relating to community service as a condition of probation, and inserting in lieu thereof the
21 following:

22 "(b) The judge may confer with the prosecutor, defense attorney, probation/parole
23 supervisor, community service officer, or other interested persons to determine if the
24 community service program is appropriate for an offender. If community service is ordered
25 as a condition of probation, the court shall order:

26 (1) Not less than 20 hours nor more than 250 hours in cases involving traffic or
27 ordinance violations or misdemeanors, said service to be completed within one year; or

28 (2) Not less than 20 hours nor more than 500 hours in felony cases, said service to be
29 completed within three years.

30 (c)(1) Any agency may recommend to the court that certain disabled persons are in need
31 of a live-in attendant. The judge shall confer with the prosecutor, defense attorney,
32 probation/parole supervisor, community service officer, or other interested persons to
33 determine if a community service program involving a disabled person is appropriate for
34 an offender. If community service as a live-in attendant for a disabled person is deemed
35 appropriate and if both the offender and the disabled person consent to such service, the

1 court may order such live-in community service as a condition of probation but for no
2 longer than two years.

3 (2) The agency shall be responsible for coordinating the provisions of the cost of food
4 or other necessities for the offender which the disabled person is not able to provide. The
5 agency, with the approval of the court, shall determine a schedule which will provide the
6 offender with certain free hours each week.

7 (3) Such live-in arrangement shall be terminated by the court upon the request of the
8 offender or the disabled person. Upon termination of such an arrangement, the court shall
9 determine if the offender has met the conditions of probation.

10 (4) The appropriate agency shall make personal contact with the disabled person on a
11 frequent basis to ensure the safety and welfare of the disabled person."

12 SECTION 28.

13 Said title is further amended by striking Code Section 42-8-80, relating to the establishment,
14 operation, rules, and regulations of the Department of Corrections pretrial release and
15 diversion programs, and inserting in lieu thereof the following:

16 "42-8-80.

17 ~~The Department of~~ Corrections shall be authorized to establish and operate pretrial release
18 and diversion programs as rehabilitative measures for persons charged with felonies for
19 which bond is permissible under the law in the courts of this state prior to conviction;
20 provided, however, that no such program shall be established in a county without the
21 unanimous approval of the superior court judges, the district attorney, and the sheriff of
22 such county. The Board of Corrections shall promulgate rules and regulations governing
23 any pretrial release and diversion programs established and operated by ~~the department~~
24 corrections and shall grant authorization for the establishment of such programs based on
25 the availability of sufficient staff and resources."

26 SECTION 29.

27 Said title is further amended by striking Code Section 42-8-82, relating to Department of
28 Corrections contracts with counties for services and facilities, and inserting in lieu thereof
29 the following:

30 "42-8-82.

31 ~~The Department of~~ Corrections may contract with the various counties of this state for the
32 services and facilities necessary to operate pretrial release and diversion programs
33 established under this article and both ~~the department~~ corrections and the counties are
34 authorized to enter into such contracts as are appropriate to carry out the purpose of this
35 article."

SECTION 30.

Said title is further amended by striking subsection (b) of Code Section 42-8-111, relating to court ordered installation of ignition interlock devices, and inserting in lieu thereof the following:

"(b) Any resident of this state who is ordered to use an ignition interlock device, as a condition of probation, shall complete the DUI Alcohol or Drug Use Risk Reduction Program and submit to the court or ~~probation~~ department a certificate of completion of the DUI Alcohol or Drug Use Risk Reduction Program and certification of installation of a certified ignition interlock device to the extent required by subsection (a) of this Code section."

SECTION 31.

Said title is further amended by striking subsection (a) of Code Section 42-8-114, relating to specifying providers for ignition interlock devices, and inserting in lieu thereof the following:

"(a) No judicial officer, probation officer, probation/parole supervisor, law enforcement officer, or other officer or employee of a court; person who owns, operates, or is employed by a private company which has contracted to provide private probation services for misdemeanor cases; or professional bondsman or agent or employee thereof shall specify, directly or indirectly, a particular provider center which the person may or shall utilize when use of an ignition interlock device is required. This subsection shall not prohibit any judicial officer, probation officer, probation/parole supervisor, law enforcement officer, or other officer or employee of a court; owner, operator, or employee of a private company which has contracted to provide probation services for misdemeanor cases; or professional bondsman or agent or employee thereof from furnishing any person, upon request, the names of certified provider centers."

SECTION 32.

Said title is further amended by striking Code Section 42-8-116, relating to warning labels for ignition interlock devices, and inserting in lieu thereof the following:

"42-8-116.

The providers certified by the Department of Motor Vehicle Safety shall design and adopt pursuant to regulations of the ~~department~~ Department of Motor Vehicle Safety a warning label which shall be affixed to each ignition interlock device upon installation. The label shall contain a warning that any person tampering, circumventing, or otherwise misusing the device is guilty of a misdemeanor and may be subject to civil liability."

SECTION 33.

Said title is further amended by striking Code Section 42-9-3, relating to definitions related to the State Board of Pardons and Paroles, and inserting in lieu thereof the following:

"42-9-3.

As used in this chapter, the term:

(1) 'Board' ~~'board'~~ means the State Board of Pardons and Paroles.

(2) 'Department' means the Department of Probation/Parole Community Based Supervision.

(3) 'Split sentence' means any felony sentence that includes a term of imprisonment followed by a term of probation."

SECTION 34.

Said title is further amended by striking Code Section 42-9-20, relating to general powers and duties of the State Board of Pardons and Paroles, and inserting in lieu thereof the following:

"42-9-20.

(a) In all cases in which the chairman of the board or any other member designated by the board has suspended the execution of a death sentence to enable the full board to consider and pass on same, it shall be mandatory that the board act within a period not exceeding 90 days from the date of the suspension order. In the cases which the board has power to consider, the board shall be charged with the duty of determining which inmates serving sentences imposed by a court of this state may be released on pardon or parole and fixing the time and conditions thereof. The board shall also be charged with the duty of supervising all persons placed on parole, of determining violations thereof and of taking action with reference thereto, of making ~~such~~ investigations as may be necessary, and of aiding parolees or probationers in securing employment. It shall be the duty of the board personally to study the cases of those inmates whom the board has power to consider so as to determine their ultimate fitness for ~~such~~ relief as the board has power to grant. The board by an affirmative vote of a majority of its members shall have the power to commute a sentence of death to one of life imprisonment.

(b) With respect to inmates sentenced under split sentences entered on or after July 1, 2005, and all persons paroled or otherwise released by the board prior to completion of his or her sentence on or after July 1, 2005, the board shall have no duty to supervise inmates who have been paroled or otherwise released prior to completion of their sentence of confinement. Supervision of inmates paroled, released, or released from split sentence confinement shall be through an increase in their period of probation, as provided in Code Section 17-10-1.3. Any reference elsewhere in this chapter to duties of the board with

1 respect to supervision of parolees and other persons released from confinement shall not
2 include inmates released from confinement on or after July 1, 2005."

3 SECTION 35.

4 Said title is further amended by striking Code Section 42-9-21, relating to supervision of
5 persons placed on parole or other conditional release, and inserting in lieu thereof the
6 following:

7 "42-9-21.

8 (a) The board shall have the function and responsibility of supervising all persons placed
9 on parole or other conditional release by the board prior to July 1, 2005. On and after
10 July 1, 2005, the department shall have the function and responsibility of supervising all
11 persons placed on parole or other conditional release by the board.

12 (b) The board ~~is~~ and the department are authorized to maintain and operate or to enter into
13 memoranda of agreement or other written documents evidencing contracts with other state
14 agencies, persons, or any other entities for transitional or intermediate or other services or
15 for programs deemed by the board or the department to be necessary for parolees or others
16 conditionally released from imprisonment by order of the board and to require as a
17 condition of relief that the offender pay directly to the provider a reasonable fee for said
18 services or programs.

19 (c) In all cases where restitution is applicable, the board or department shall collect during
20 the parole period those sums determined to be owed to the victim."

21 SECTION 36.

22 Said title is further amended by striking subsection (d) of Code Section 42-9-42, relating to
23 procedure for granting relief from sentence, conditions, and violations of parole, and
24 inserting in lieu thereof the following:

25 "(d)(1) Any person who is paroled shall be released on ~~such~~ the terms and conditions as
26 the board shall prescribe. The board shall diligently see that no peonage is allowed in the
27 guise of parole relationship ~~or supervision~~. The parolee shall remain in the legal custody
28 of the board until the expiration of the maximum term specified in ~~his~~ the parolee's
29 sentence or until ~~he~~ the parolee is pardoned by the board and shall be supervised during
30 this period of time by the department.

31 (2) The board may require the payment of a parole supervision fee of at least \$10.00 per
32 month as a condition of parole or other conditional release. The monthly amount shall
33 be set by rule of the board and shall be uniform state wide. The board may require or the
34 parolee or person under conditional release may request that up to 24 months of the
35 supervision fee be paid in advance of the time to be spent on parole or conditional release.

1 In such cases, any advance payments are nonreimbursable in the event of parole or
2 conditional release revocation or if parole or conditional release is otherwise terminated
3 prior to the expiration of the sentence being served on parole or conditional release. ~~Such~~
4 The fees shall be collected by the board to a probation/parole supervisor and shall be paid
5 into the general fund of the state treasury."

6 SECTION 37.

7 Said title is further amended by striking Code Section 42-9-44, relating to terms and
8 conditions of parole and violation of parole, and inserting in lieu thereof the following:

9 "42-9-44.

10 (a) The board, upon placing a person on parole, shall specify in writing the terms and
11 conditions thereof. A certified copy of the conditions shall be given to the parolee.
12 Thereafter, a copy shall be sent to the clerk of the court in which the person was convicted.
13 The board shall adopt general rules concerning the terms and conditions of parole and
14 concerning what shall constitute a violation thereof and shall make special rules to govern
15 particular cases. The rules, both general and special, may include, among other things, a
16 requirement that the parolee shall not leave this state or any definite area in this state
17 without the consent of the board; that the parolee shall contribute to the support of his or
18 her dependents to the best of the parolee's ability; that the parolee shall make reparation
19 or restitution for his or her crime; that the parolee shall abandon evil associates and ways;
20 and that the parolee shall carry out the instructions of his or her probation/parole
21 supervisor, and, in general, so comport himself or herself as the ~~parolee's~~ supervisor shall
22 determine. A violation of the terms of parole may render the parolee liable to arrest and
23 a return to a penal institution to serve out the term for which the parolee was sentenced.

24 (b) Each parolee who does not have a high school diploma or a general educational
25 development equivalency diploma (GED) shall be required as a condition of parole to
26 obtain a high school diploma or general educational development equivalency diploma
27 (GED) or to pursue a trade at a ~~vocational or technical school~~ college. Any such parolee
28 who demonstrates to the satisfaction of the board an existing ability or skill which does in
29 fact actually furnish the parolee a reliable, regular, and sufficient income shall not be
30 subject to this provision. Any parolee who is determined by the ~~Department of Corrections~~
31 department or the board to be incapable of completing such requirements shall only be
32 required to attempt to improve ~~their~~ his or her basic educational skills. Failure of any
33 parolee subject to this requirement to attend the necessary schools or courses or to make
34 reasonable progress toward fulfillment of such requirement shall be grounds for revocation
35 of parole. The board shall establish regulations regarding reasonable progress as required
36 by this subsection. This subsection shall apply to paroles granted on or after July 1, 1995."

SECTION 38.

Said title is further amended by striking subsection (d) of Code Section 42-9-48, relating to arrest of parolee or conditional release violator, and inserting in lieu thereof the following:

"(d) Any probation/parole supervisor, when he or she has reasonable ground to believe that a parolee or conditional releasee has violated the terms or conditions of his or her parole or conditional release in a material respect, shall notify the board or some member thereof; and proceedings shall thereupon be had as provided in this Code section."

SECTION 39.

Said title is further amended by striking Code Section 42-9-57, relating to the effect of parole on probation and the board's cooperation with local agencies, and inserting in lieu thereof the following:

"42-9-57.

Nothing contained in this chapter shall be construed as repealing any power given to any court of this state to place offenders on probation or to supervise the same nor any power of any probation agency set up in any county of the state in conjunction with the courts.

The board shall be authorized to cooperate with any such agencies, ~~except that it and~~ specifically with the Department of Probation/Parole Community Based Supervision for purposes of supervising parolees and persons released pursuant to conditional release. The ~~board~~ shall not assume or pay any financial obligations thereof. ~~The board shall also be authorized to cooperate with the courts for the probation of offenders in those counties in which there is no existing probation agency, when a court so requests of other agencies but shall share appropriately in the financial obligation of the Department of Probation/Parole Community Based Supervision for purposes of supervision needs of the board."~~

SECTION 40.

Said title is further amended by striking subsection (b) of Code Section 42-9-90, relating to application fee required for parolee transfer consideration, and inserting in lieu thereof the following:

"(b) ~~The Department of Corrections~~ Department of Probation/Parole Community Based Supervision and the State Board of Pardons and Paroles are authorized to require any nonindigent adult offender to pay a \$25.00 application fee when applying to transfer his or her supervision from Georgia to any other state or territory pursuant to the provisions of Articles 3 and 4 of this chapter."

SECTION 41.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended by striking subsection (b) of Code Section 16-6-5.1, relating to sexual assaults against persons in custody, detained, in hospitals, or involved in psychotherapy, and inserting in lieu thereof the following:

"(b) A probation/parole supervisor or ~~parole~~ probation officer or other custodian or supervisor of another person referred to in this Code section commits sexual assault when he or she engages in sexual contact with another person who is a probationer or parolee under the supervision of said probation/parole supervisor or ~~parole~~ probation officer or who is in the custody of law or who is enrolled in a school or who is detained in or is a patient in a hospital or other institution and such actor has supervisory or disciplinary authority over such other person. A person convicted of sexual assault shall be punished by imprisonment for not less than one nor more than three years."

SECTION 42.

Said title is further amended by striking subsection (b) of Code Section 16-10-24, relating to obstructing or hindering law enforcement officers, and inserting in lieu thereof the following:

"(b) Whoever knowingly and willfully resists, obstructs, or opposes any law enforcement officer, prison guard, correctional officer, probation/parole supervisor, ~~parole supervisor~~, or conservation ranger in the lawful discharge of his or her official duties by offering or doing violence to the person of such officer or legally authorized person is guilty of a felony and shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years."

SECTION 43.

Said title is further amended by striking subsection (a) of Code Section 16-10-33, relating to removal or attempted removal of a weapon from a public official and punishment therefor, and inserting in lieu thereof the following:

"(a) It shall be unlawful for any person knowingly to remove or attempt to remove a firearm, chemical spray, or baton from the possession of another person if:

(1) The other person is lawfully acting within the course and scope of employment; and

(2) The person has knowledge or reason to know that the other person is employed as:

(A) A peace officer as defined in paragraph (8) of Code Section 35-8-2;

(B) A probation/parole officer, or other employee with the power of arrest, by the

Department of ~~Corrections~~ Probation/Parole Community Based Supervision;

(C) A probation/parole supervisor, or other employee with the power of arrest, by the ~~State Board of Pardons and Paroles~~ Department of Probation/Parole Community Based Supervision;

(D) A jail officer or guard by a county or municipality and has the responsibility of supervising inmates who are confined in a county or municipal jail or other detention facility; or

(E) A juvenile correctional officer by the Department of Juvenile Justice and has the primary responsibility for the supervision and control of youth confined in such department's programs and facilities."

SECTION 44.

Said title is further amended by striking subsection (d) of Code Section 16-11-37, relating to terroristic threats and acts and penalties therefor, and inserting in lieu thereof the following:

"(d) A person who commits or attempts to commit a terroristic threat or act with the intent to retaliate against any person for:

(1) Attending a judicial or administrative proceeding as a witness, attorney, judge, or party or producing any record, document, or other object in a judicial or official proceeding; or

(2) Providing to a law enforcement officer, adult probation/parole supervisor or juvenile probation officer, prosecuting attorney, or judge any information relating to the commission or possible commission of an offense under the laws of this state or of the United States or a violation of conditions of bail, pretrial release, probation, or parole shall be guilty of the offense of a terroristic threat or act and, upon conviction thereof, shall be punished, for a terroristic threat, by imprisonment for not less than five nor more than ten years or by a fine of not less than \$50,000.00, or both, and, for a terroristic act, by imprisonment for not less than five nor more than 20 years or by a fine of not less than \$100,000.00, or both."

SECTION 45.

Said title is further amended by striking paragraph (1) of Code Section 16-11-124, relating to exemptions from application of the "Georgia Firearms and Weapons Act," and inserting in lieu thereof the following:

"(1) A peace officer of any duly authorized police agency of this state or of any political subdivision thereof, or a law enforcement officer of any department or agency of the United States who is regularly employed and paid by the United States, this state, or any such political subdivision, or an employee of the Department of Corrections of this state

1 who is authorized in writing by the commissioner of corrections to transfer or possess
2 such firearms while in the official performance of his or her duties, or an employee of the
3 Department of Probation/Parole Community Based Supervision of this state who is
4 authorized in writing by the director of the Department of Probation/Parole Community
5 Based Supervision to transfer or possess such firearms while in the official performance
6 of his or her duties;"

7 SECTION 46.

8 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
9 amended by striking subsection (a) of Code Section 17-10-1, relating to fixing and
10 modification of sentences, and inserting in lieu thereof the following:

11 "(a)(1) Except in cases in which life imprisonment, life without parole, or the death
12 penalty may be imposed, upon a verdict or plea of guilty in any case involving a
13 misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence
14 shall prescribe a determinate sentence for a specific number of months or years which
15 shall be within the minimum and maximum sentences prescribed by law as the
16 punishment for the crime. The judge imposing the sentence is granted power and
17 authority to suspend or probate all or any part of the entire sentence under such rules and
18 regulations as the judge deems proper, including service of a probated sentence in the
19 sentencing options system, as provided by Article 9 of Chapter 8 of Title 42, and
20 including the authority to revoke the suspension or probation when the defendant has
21 violated any of the rules and regulations prescribed by the court, even before the
22 probationary period has begun, subject to the conditions set out in this subsection;
23 provided, however, that such action shall be subject to the provisions of Code Section
24 17-10-6.1.

25 (2) Probation supervision shall terminate in all cases no later than two years from the
26 commencement of probation supervision unless specially extended or reinstated by the
27 sentencing court upon notice and hearing and for good cause shown; provided, however,
28 that, in those cases involving the collection of fines, restitution, or other funds, the period
29 of supervision shall remain in effect for so long as any ~~such~~ obligation is outstanding, or
30 until termination of the sentence, whichever first occurs; and provided, further, that,
31 where a period of post-incarceration probation is increased as a result of parole or other
32 release as provided in Code Section 17-10-1.3, the otherwise applicable two-year
33 maximum shall be increased by the amount of time for which the period of
34 post-incarceration probation is increased. Probation supervision shall not be required for
35 defendants sentenced to probation while the defendant is in the legal custody of the
36 Department of Corrections ~~or the State Board of Pardons and Paroles.~~

1 (3)(A) Any part of a sentence of probation revoked for a violation other than a
2 subsequent commission of any felony, a violation of a special condition, or a
3 misdemeanor offense involving physical violence resulting in bodily injury to an
4 innocent victim which in the opinion of the trial court constitutes a danger to the
5 community or a serious infraction occurring while the defendant is assigned to an
6 alternative probation confinement facility shall be served in a probation detention
7 center, probation boot camp, diversion center, weekend lock up, or confinement in a
8 local jail or detention facility, or other community correctional alternatives available
9 to the court or provided by the Department of Corrections.

10 (B) A parolee or probationer charged with a misdemeanor involving physical injury
11 or an attempt to commit physical injury or terroristic threats or with a new felony shall
12 not be entitled to bond pending a hearing on the revocation of his or her parole or
13 probation, except by order of a judge of the superior, state, or magistrate court wherein
14 the alleged new offense occurred after a hearing and upon determination of the superior,
15 state, or magistrate court that the parolee or probationer does not constitute a threat to
16 the community; provided, however, that this subparagraph does not authorize state or
17 magistrate court judges to grant bail for a person charged with any offense listed in
18 subsection (a) of Code Section 17-6-1.

19 (4) In cases of imprisonment followed by probation, the sentence shall specifically
20 provide that the period of probation shall not begin until the defendant has completed
21 service of the confinement portion of the sentence or been released from confinement by
22 the State Board of Pardons and Paroles as provided in Code Section 17-10-1.3. ~~No~~ With
23 respect to a sentence entered prior to July 1, 2005, no revocation of any part of a probated
24 sentence shall be effective while a defendant is in the legal custody of the State Board of
25 Pardons and Paroles.

26 (5)(A) Where a defendant has been sentenced to probation, the court shall retain
27 jurisdiction throughout the period of the probated sentence as provided for in subsection
28 (g) of Code Section 42-8-34. Without limiting the generality of the foregoing, the court
29 may shorten the period of probation on motion of the defendant or on its own motion,
30 if the court determines that probation is no longer necessary or appropriate for the ends
31 of justice, the protection of society, and the rehabilitation of the defendant. Prior to
32 entering any order for shortening a period of probation, the court shall afford notice to
33 the victim or victims of all sex related offenses or violent offenses resulting in serious
34 bodily injury or death, and, upon request of the victim or victims so notified, shall
35 afford notice and an opportunity for hearing to the defendant and the prosecuting
36 attorney.

(B) The Department of ~~Corrections~~ Probation/Parole Community Based Supervision shall establish a form document which shall include the elements set forth in this Code section concerning notification of victims and shall make copies of such form available to prosecuting attorneys in the state. When requested by the victim, the form document shall be provided to the victim by the prosecuting attorney. The form shall include the address of the probation/parole community based supervision office having jurisdiction over the case and contain a statement that the victim must maintain a copy of his or her address with the probation/parole community based supervision office and must notify the office of any change of address in order to maintain eligibility for notification by the Department of ~~Corrections~~ Probation/Parole Community Based Supervision as required in this Code section.

(6)(A) Except as otherwise authorized by law, no court shall modify, suspend, probate, or alter a previously imposed sentence so as to reduce or eliminate a period of incarceration or probation and impose a financial payment which:

- (i) Exceeds the statutorily specified maximum fine, plus all penalties, fees, surcharges, and restitution permitted or authorized by law; or
- (ii) Is to be made to an entity which is not authorized by law to receive fines, penalties, fees, surcharges, or restitution.

(B) The prohibitions contained in this paragraph shall apply regardless of whether a defendant consents to the modification, suspension, probation, or alteration of such defendant's sentence and the imposition of such payment.

(C) Nothing in this paragraph shall prohibit or prevent a court from requiring, as a condition of suspension, modification, or probation of a sentence in a criminal case involving child abandonment, that the defendant pay all or a portion of child support which is owed to the custodial parent of a child which is the subject of such case."

SECTION 47.

Said title is further amended by adding immediately after Code Section 17-10-1.2, relating to oral victim impact statements, a new Code Section 17-10-1.3 to read as follows:

"17-10-1.3.

(a) As used in this Code section, the term 'split sentence' means any felony sentence that includes a term of imprisonment followed by a term of probation.

(b) In any case where a judge on or after July 1, 2005, sentences a defendant to a split sentence, post-incarceration supervision of the defendant shall be conducted exclusively by the Department of Probation/Parole Community Based Supervision and not by the State Board of Pardons and Paroles, regardless of whether the defendant has served the full period of incarceration ordered in the sentence or has been released prior to the full period

1 of incarceration by parole, conditional release, or other action of the State Board of Pardons
2 and Paroles.

3 (c) Any split sentence order entered on or after July 1, 2005, shall provide that the
4 post-incarceration period of probation ordered in the sentence shall be increased by an
5 amount of time equal to any amount of time by which the period of incarceration is
6 decreased by the State Board of Pardons and Paroles. Such increased portion of the period
7 of probation shall run concurrently with the period of time by which the period of
8 incarceration was decreased and shall commence upon the defendant's release from
9 incarceration. Any split sentence order entered on or after July 1, 2005, which by its terms
10 fails to so provide for the increased period of probation shall be deemed to so provide by
11 operation of law.

12 (d) In any case where a judge on or after July 1, 2005, sentences a defendant for a felony
13 offense to straight probation or to an alternative probation confinement facility, supervision
14 of the defendant shall be conducted exclusively by the Department of Probation/Parole
15 Community Based Supervision and not by the state-wide probation system.

16 (e) Nothing in this Code section shall apply to or affect any case in which a pardon is
17 granted by the State Board of Pardons and Paroles."

18 **SECTION 48.**

19 Said title is further amended by striking subsection (a) of Code Section 17-10-6, relating to
20 sentence review for sentences of imprisonment exceeding 12 years, and inserting in lieu
21 thereof the following:

22 "(a) In any case, except cases in which the death penalty is imposed or cases involving a
23 serious violent felony as defined in subsection (a) of Code Section 17-10-6.1, in which a
24 sentence of 12 or more years, or several consecutive sentences which total 12 or more
25 years, has been fixed and imposed by a judge, without a jury, the defendant shall have the
26 right to have the sentence or sentences reviewed by a panel of three superior court judges
27 to determine whether the sentence or sentences so imposed are excessively harsh.
28 Consideration shall be given in the review to the nature of the crime for which the
29 defendant has been convicted and to the defendant's prior criminal record. Any defendant
30 seeking a review of such sentence or sentences shall make application therefor within 30
31 days of the date on which the sentence was imposed by a judge of the superior court or
32 after the remittitur from the Court of Appeals or Supreme Court affirming the conviction
33 is made the judgment of the sentencing court, whichever occurs last. The application shall
34 be filed with the clerk of the superior court in which the sentence was imposed. Upon the
35 filing of an application the clerk shall transmit the same to the three-judge panel created
36 under this Code section within ten days of the date on which the application was filed. For

1 such service, the clerk shall receive the fees prescribed in Code Section 15-6-77 from the
2 funds of the county, except where the clerk is on a salary. It shall be the duty of the judge
3 imposing the sentence and any ~~probation officer~~ probation/parole supervisor to transmit,
4 within ten days of the filing of an application for review of a sentence, a copy of any
5 presentence or postsentence report prepared by the ~~probation officer~~ probation/parole
6 supervisor, including the record of the defendant, to the three-judge panel."

7 **SECTION 49.**

8 Said title is further amended by striking subsections (c) and (d) of Code Section 17-10-9.1,
9 relating to voluntary surrender to county jail or correctional institution and release of
10 defendant, and inserting in lieu thereof the following:

11 "(c) When a defendant submits a request to the sentencing judge to be allowed to surrender
12 voluntarily to a county jail or a correctional facility, the judge may consider the request and
13 if, taking into the consideration the crime for which the defendant is being sentenced, the
14 history of the defendant, and any other factors which may aid in the decision, the judge
15 determines that the granting of the request will pose no threat to society, the defendant shall
16 be remanded to the supervision of a ~~probation officer~~ probation/parole supervisor by the
17 judge and ordered to surrender voluntarily to a county jail designated by the court or to a
18 correctional institution as thereafter designated by the Department of Corrections. The
19 surrender date shall be a date thereafter specified as provided in subsection (d) of this Code
20 section. The sentence of any defendant who is released pursuant to this Code section shall
21 not begin to run until such person surrenders to the facility designated by the court or by
22 the department, provided that such person will receive credit toward his or her sentence for
23 time spent in confinement awaiting trial as provided in Code Section 17-10-11.

24 (d) In the event the defendant is ordered to surrender voluntarily to a county jail, the court
25 shall designate the date on which the defendant shall surrender, which date shall not be
26 more than 120 days after the date of conviction. When the sentencing judge issues an order
27 requiring a defendant to surrender voluntarily to a correctional institution, the Department
28 of Corrections shall authorize the commitment and designate the correctional institution to
29 which the defendant shall report and the date on which the defendant is to report, which
30 date shall not be more than 120 days after the date of conviction. Upon such designation,
31 the department shall notify the ~~supervising probation officer~~ defendant's probation/parole
32 supervisor who shall notify the defendant accordingly. Subsistence and transportation
33 expenses en route to the correctional institution shall be borne by the defendant."

SECTION 50.

Said title is further amended by striking paragraph (5) of Code Section 17-17-3, relating to definitions in the "Crime Victims' Bill of Rights," and inserting in lieu thereof the following:

"(5) 'Custodial authority' means a warden, sheriff, jailer, deputy sheriff, police officer, correctional officer, officer or employee of the Department of Corrections, Department of Probation/Parole Community Based Supervision, or the Department of Juvenile Justice, or any other law enforcement officer having actual custody of the accused."

SECTION 51.

Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is amended by striking subsection (a) of Code Section 19-7-52, relating to whom child support payments are made, and inserting in lieu thereof the following:

"(a) The court may order that support payments be made to the mother or other interested party, the child support receiver, the prosecuting attorney, the probation officer, the probation/parole supervisor, or the clerk of court, provided that, in those cases where the action has been brought by the Department of Human Resources on behalf of a child, the support payment shall be made to the Department of Human Resources for distribution or to the child support receiver if the Department of Human Resources so requests."

SECTION 52.

Said title is further amended by striking Code Section 19-11-21, relating to payment of support to the Department of Human Resources, and inserting in lieu thereof the following:

"19-11-21.

Payment of support pursuant to an administrative determination or a voluntary agreement shall be made to the department. In non-TANF cases, where the department deems it appropriate, it may authorize distribution of the actual payment by other individuals, agencies, or entities and utilize certification schedules reflecting such payments or distributions which the department requires, in accordance with the federal Social Security Act, as amended. Child support which is ordered by a court pursuant to a divorce decree or in any other proceeding in which the responsible parent is required to pay support for his or her child or children, whether the proceeding is civil or criminal, shall be paid by the responsible parent, the clerk of court, the probation officer, the probation/parole supervisor, the child support receiver, or a similar official who is collecting support to the department upon the department's certification that the child is a recipient of public assistance or upon the department's certification that an application has been filed with the department for enforcement of support in accordance with the provisions of the federal Social Security Act."

SECTION 53.

Said title is further amended by striking paragraph (4) of Code Section 19-13-51, relating to definitions in the "Family Violence and Stalking Protective Order Registry Act," and inserting in lieu thereof the following:

"(4) 'Law enforcement officer' means any agent or officer of this state, or a political subdivision or municipality thereof, who, as a full-time or part-time employee, is vested either expressly by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws and whose duties include the preservation of public order, the protection of life and property, or the prevention, detection, or investigation of crime. Such term also includes the following: state or local officer, sheriff, deputy sheriff, dispatcher, 911 operator, police officer, prosecuting attorney, member of the State Board of Pardons and Paroles, and a hearing officer and a probation/parole officer of the State Board of Pardons and Paroles, and a probation officer of the Department of Corrections Probation/Parole Community Based Supervision."

SECTION 54.

Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is amended by striking subsection (b) of Code Section 40-5-81, relating to attendance at driver improvement programs, and inserting in lieu thereof the following:

"(b) Whenever any person is authorized or required to attend a driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program as a condition of any sentence imposed under this title or any ordinance enacted pursuant to this title or as a condition of the retention or restoration of the person's driving privilege, such person, in complying with such condition, shall be authorized to attend any driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program certified under this article; and no judicial officer, probation officer, probation/parole supervisor, law enforcement officer, or other officer or employee of a court or person who owns, operates, or is employed by a private company which has contracted to provide private probation services for misdemeanor cases shall specify, directly or indirectly, a particular driver improvement clinic or DUI Alcohol or Drug Use Risk Reduction Program which the person may or shall attend. This Code section shall not prohibit any judicial officer, probation officer, probation/parole supervisor, law enforcement officer, or other officer or employee of a court or owner, operator, or employee of a private company which has contracted to provide probation services for misdemeanor offenders from furnishing any person, upon request, the names of certified driver improvement clinics or DUI Alcohol or Drug Use Risk Reduction Programs."

SECTION 55.

Said title is further amended by striking subsection (d) of Code Section 40-5-83, relating to establishment and approval of driving clinics and programs and restrictions, and inserting in lieu thereof the following:

"(d) Notwithstanding the provisions of any law or rule or regulation which prohibits any individual who is a probation officer or other official or employee of the probation division of the Department of Corrections or a spouse of such individual from owning, operating, instructing at, or being employed by a driver improvement clinic, any individual who is a probation officer or other official or employee of the probation division of the Department of Corrections or a spouse of such individual who owns, operates, instructs at, or is employed by a driver improvement clinic on June 1, 1985, and who in all respects is and remains qualified to own, operate, instruct at, or be employed by a driver improvement clinic is expressly authorized to continue on and after June 1, 1985, to engage in such activities. Any individual who is a probation/parole supervisor or other official or employee of the Department of Probation/Parole Community Based Supervision or a spouse of such individual who owns, operates, instructs at, or is employed by a driver improvement clinic on June 1, 2005, and who in all respects is and remains qualified to own, operate, instruct at, or be employed by a driver improvement clinic is expressly authorized to continue on and after June 1, 2005, to engage in such activities. No person who owns, operates, or is employed by a private company which has contracted to provide probation services for misdemeanor cases shall be authorized to own, operate, be an instructor at, or be employed by a driver improvement clinic or a DUI Alcohol or Drug Use Risk Reduction Program."

SECTION 56.

Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees, is amended by striking subsection (e) of Code Section 45-7-9, relating to compensation for line-of-duty injuries to full-time state employees and exceptions, and inserting in lieu thereof the following:

"(e) Any employee of the Department of Corrections, employee of the State Board of Pardons and Paroles, employee of the Department of Probation/Parole Community Based Supervision, employee of the Department of Natural Resources, employee of the Department of Revenue, or law enforcement officer who qualifies for disability allowances pursuant to Code Section 47-2-221 shall not be entitled to any benefits provided in this Code section."

SECTION 57.

Said title is further amended by striking paragraph (8) of Code Section 45-9-81, relating to definitions concerning the Georgia State Indemnification Fund, and inserting in lieu thereof the following:

"(8) 'Prison guard' means any person employed by the state or any political subdivision thereof whose principal duties relate to the supervision and incarceration of persons accused or convicted of the violation of the criminal laws of this state or any political subdivision thereof. Such term shall also mean any probation/parole supervisor or parole officer who is required to be certified under Chapter 8 of Title 35, the 'Georgia Peace Officer Standards and Training Act,' and whose principal duties directly relate to the supervision of adult probationers or adult parolees. Such term also means any person employed by the state or any political subdivision thereof whose principal duties include the supervision of youth who are charged with or adjudicated for an act which if committed by adults would be considered a crime."

SECTION 58.

This Act shall become effective July 1, 2005, and shall apply with respect to sentences entered on or after that date.

SECTION 59.

All laws and parts of laws in conflict with this Act are repealed.